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IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

United States of America,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 1984-104
)	
Government of the Virgin Islands,)	
)	
Defendant.)	
)	

MEMORANDUM

The United States filed an emergency motion to address several serious violations of this Court's Amended Consent Decree, including the dumping of millions of gallons of raw sewage at several locations on St. Croix ["illegal bypass"], including the LBJ Pump Station, as well as the general deteriorated state of the St. Croix Wastewater Treatment Plant. Following a hearing, the Court, on February 15, 2000, ordered the Government of the Virgin Islands ["Virgin Islands"], through its Department of Public Works ["DPW"], *inter alia*, to have the LBJ Pump Station in a "fully-functioning, operational mode" by Friday, February 18th. The Court subsequently granted the Virgin Islands' motion to have until Sunday, February 27, 2000, within which to complete the repairs. A day after this extended deadline, on February 28th the Virgin Islands filed a second motion for extension of time, this time requesting that "it be

granted an enlargement of time until March 9, 2000 to have the station operational and the bypass stopped."

It must be emphasized at the outset that neither the Court nor the United States picked the original deadline of February 18th out of thin air. This is the date requested and agreed to by Mr. Harold Thompson, Jr., Commissioner of DPW ["Commissioner"], in testimony at the hearing. Based on all the testimony and evidence presented by the parties, the Court concluded in its February 15th Order "that this raw sewage has polluted Territorial waters, and poses a serious threat to human health and the environment, inflicting irreparable harm upon both." The Court was aware of the pressing burdens, financial and otherwise, on the Virgin Islands, including the Commissioner, but nevertheless entered the February 15th Order to attempt to "impel the [Virgin Islands] toward greater efforts to safeguard the health and safety of the people of the Virgin Islands."

The Virgin Islands attached the Commissioner's affidavit of dated February 17th to its first motion to extend the time for compliance by nine days. Although the Commissioner notified the Court that DPW had been able to remedy the illegal bypass at the Figtree Pump Station, he also disclosed that a new violation of the Amended Consent Decree had occurred on February 16th at the Lagoon Street Pump Station. A major electrical failure caused

sewage to bypass the pump station into a gut near the cruise ship dock in Frederiksted and diverted DPW staff from work on the LBJ Pump Station. The Commissioner then recited the discovery of deterioration of the wet well and discharge line at the LBJ Pump Station, which he characterized as unanticipated problems, that made the February 18th deadline impractical.

These problems are summarized as: (1) finding standing water in the main electrical supply conduit, which required de-energizing the pump station to remove the water and prevented use of the electric hoist to lower the second pump into the dry well; (2) encountering unanticipated pressure in the forcemain and a "geyser" of raw sewage into the clean dry well on February 15th, which required one and one-half days to clean up; (3) discovering much debris in the wet well, the removal of which would require until February 18th; and (4) continuing lack of power at the LBJ Pump Station caused some delay and would be restored on February 17th. (See Affidavit of Harold Thompson, Jr. ¶¶ 6-8 (attached as Ex. A to Mot. for Extension of Time) ["Thompson Aff."].) The main reason for the requested nine-day extension, however, was the discovery that the new 24" valve did not match the flange on the main discharge line or forcemain.¹ A corrective fitting to

¹ The "forcemain" is a 24" pipe through which sewage is "forced" up hill by up to three pumps (when one or more of them are operational) at the LBJ Pump Station.

connect the new valve to the forcemain had to be manufactured off-island and could not be installed until February 27th. (See *id.* ¶ 9 ("Until the fitting is installed, the pumps can not be tested.")) The Commissioner stated that these problems were "unanticipated," or at least that he was not aware of them when he testified in Court and gave the estimate of February 18th for completing repairs to the LBJ Pump Station. (See *id.* ¶ 12.)

These explanations and the limited extension of another nine days seemed reasonable enough, and the Court granted the Virgin Islands' motion without receiving the benefit of a written response from the United States. By letter dated February 22nd, the United States did not seek reconsideration of the February 27th extension but put on the record its conclusion that "the Virgin Islands had no valid reason for this additional delay, which probably will result in an additional 12 million gallons of raw sewage to be discharged into the Caribbean Sea." (See Letter from Donald G. Frankel, Trial Attorney, to Hon. Thomas K. Moore at 1-2 (Feb. 22, 2000).)

The United States' objection to each of the Virgin Islands' so-called "unanticipated problems" as grounds for the first extension are summarized as follows: (1) since the water had been standing in the main electrical supply conduit for months, the Virgin Islands surely knew about it at the time of the February

11th hearing and should have anticipated that it would have to de-energize the pump station to remove the water, which obviously would prevent the use of the electric hoist to lower the second pump into the dry well; (2) the Virgin Islands surely knew that the sewage in the forcemain was under pressure and easily could have avoided the "geyser" of raw sewage into the clean dry well by emptying the forcemain into tanker trucks, and, further, that it was not necessary for DPW to drain the forcemain in the first place, since the LBJ Pump Station could be put back in operation without repairing the old forcemain; (3) similarly, any delay in obtaining the corrective fitting to connect the new 24" valve to the forcemain was unnecessary since the forcemain did not need to be replaced at this time; (4) the debris in the wet well was also not unanticipated and would have been avoided if the Virgin Islands merely had done routine maintenance and periodically cleaned the bar screens in the wet well chamber; and (5) electric power had been knocked out at the LBJ Pump Station by Hurricane Lenny in mid-November of 1999, so it hardly could have presented an unanticipated problem. (See *id.* at 2-3.)

On Monday, February 28th, the day after the first extension expired, the Virgin Islands filed its second motion for an another eleven-day extension to March 9, 2000, to make the LBJ Pump Station operational and end the illegal bypass. The United

States finally filed its opposition to the second motion in the late afternoon of Friday, March 3, 2000. (See Memorandum of the U.S. in Opp'n to Mot. of the Gov't of the V.I. for an Add'l Ext. of Time to Stop the Unlawful Discharge of Sewage at the LBJ Pump Station ["Mem. in Opp'n"].)

The Virgin Islands cites several reasons for the additional eleven-day delay, only one of which needs to be discussed here: ordering and replacing two wet well valves from an off-island manufacturer. (See Affidavit of Victor F. Stephenson ¶¶ 6-9 ["Stephenson Aff."](attached as Ex. 1 to Mot. for Enlargement of Time to Comply with the Court's Order Regarding the LBJ Pump Station ["Mot. for Enlargement of Time"])).² The United States represented that one of the three pumps at the station ["Pump No. 1"] is installed and in working condition. (See Declaration of Pedro A. Modesto ¶ 8 ["Modesto Decl."](attached as App. A to Mem. in Opp'n).) The Virgin Islands agrees that Pump No. 1 has been repaired and would be installed by February 28th. It asserts nevertheless that Pump No. 1 cannot be put back into operation because of the two failed wet well valves. (See Stephenson Aff.

² The other reasons include flooding of the wet well caused by unusually heavy rains, construction of new segments to replace portions of the forcemain, and replacement of a faulty "plug" valve. (See Stephenson Aff. ¶¶ 6-8.)

¶ 9 ("The station can not be brought back on line until the wet well valves have been obtained.")³

The Virgin Islands made this statement baldly, without any explanation or justification, despite the representation of its contractor doing the repairs that Pump No. 1 "can be operated without this valve functioning," referring not to the problem wet well valves but to a failed plug valve on the suction side of the pump. (See Letter from John R. Wessel, President, GEC, Inc. to Harold Thompson, Commissioner, Virgin Islands Department of Public Works (Feb. 24, 2000) ["GEC letter"] (attached as Ex. E to Stephenson Aff.).) The contractor mentioned the two wet well valves only by way of a caution that, if Pump No. 1 is operated, "it will probably require re-installation of the balloon in the manhole to facilitate future repairs to any pump or valve in the dry well. This is because the two . . . valves isolating the wet

³ The Virgin Islands claims that the main source of the problem at the LBJ Pump Station is the nine wet well valves installed by the Army Corps of Engineers three to four years ago, under the auspices of the EPA. (Stephenson Aff. ¶ 9.) The Virgin Islands argues that these valves were "old and substandard" when they were installed and are now obsolete, making repairs impossible and causing additional delays as the Virgin Islands must obtain replacement parts presumably from off-island. (See *id.*)

The United States disputes this and asserts that the wet well valves in question were certified by the manufacturer and approved by the Army Corps of Engineers as meeting the design criteria specified for the job. (See Declaration of Michael A. Schultz ¶ 4 ["Schultz Decl."] (attached as App. B to Mem. in Opp'n.))

The Court will deal with this dispute after the illegal bypass is eliminated and at the same time it determines whether and what sanctions, from contempt to fines, it may impose for the Virgin Islands' repeated failure to comply with the Court's orders.

well from the dry well do not function properly."⁴ (See *id.*; see also Mem. in Opp'n at 4-5 (noting failure of Virgin Islands to explain why faulty operation of the two wet well valves prevents operating Pump No. 1 at LBJ Pump Station).)

Since the Virgin Islands has no idea when the wet well valves can be replaced, (see Stephenson Aff. ¶ 9 ("It is impossible to estimate how long it will take to obtain these valves.")), the Commissioner of DPW proposed to use the time from February 28th to March 9th to

explor[e] the option of making a temporary connection in the discharge line and obtain[] a pump to pump into the line. . . . This pump would be attached to a fitting on the forcemain (this is another reason it was necessary to repair the forcemain).^[5] This temporary

⁴ The contractor's reference to a "balloon" refers to a method of "dewatering" the pump station. A diver enters a manhole located adjacent to the pump station and plugs the intake pipe with an inflatable balloon. After the balloon, acting as a plug, is in place, any sewage that has entered the dry well of the pump station can be pumped out of the dry well and any necessary repairs then can be completed. A diver plugged the intake pipe into the LBJ Pump Station on February 1, 2000, (see Memorandum in Support of Emergency Mot. of the U.S. at 15 (filed Feb. 7, 2000)), and the dry well was drained as of February 17, 2000, (see Thompson Aff. ¶ 4).

⁵ The Virgin Islands further attempted to refute the claim of the United States that the forcemain repair was not necessary to end the illegal bypass, stating that although it would be possible to start the pump station without repairing the forcemain, it was likely that the increased pressure of the new pumps would cause the "dilapidated old forcemain . . . to rupture as soon as the pumps were started." (Stephenson Aff. ¶ 7.)

The United States disputes this with the sensible observation that Pump No. 1 is the same pump that had been running at the LBJ Pump Station since 1996, during which time it did not rupture the same dilapidated old forcemain, so "it is not clear why DPW believes that the pressure in the forcemain will be any greater than it was before the unlawful discharge began." (See Modesto Decl. ¶ 10; Schultz Decl. ¶ 5.)

The Court also will deal with this dispute after the illegal bypass is eliminated and at the same time it determines whether and what sanctions, from

fix is anticipated to be completed by March 9, 2000.
This temporary fix only became feasible available [sic]
after we were in position to fix the forcemain

(See *id.* ¶ 10.)⁶ Fortunately, the United States has taken the time to describe for the Court the temporary fix, as it understands it: leasing a diesel pump from the Virgin Islands' contractor to pump the sewage around the LBJ Pump Station through a 4" pipe attached to the forcemain at a "T joint" DPW has installed. (See Modesto Decl. ¶ 6.)

Probably the most disturbing aspect of this second motion for an extension is its disingenuous, if not downright misleading, nature. Although couched as a motion for "an enlargement of time until March 9, 2000 to have the station operational," (see Mot. for Enlargement of Time at 2), it is really a request for time to install a "temporary fix" which will bypass the station, not restore the LBJ Pump Station to full operation. Even if the Court were to grant the extension to March 9th, the Virgin Islands would still be in violation of the February 15th Order to have the LBJ Pump Station in a "fully-

contempt to fines, it may impose for the Virgin Islands' repeated failure to comply with its orders.

⁶ Although the above quote is from the affidavit of Victor F. Stephenson, employed by DPW as the "Acting Director of Utilities" in charge of the operation and maintenance of the LBJ Pump Station, the Commissioner agreed with Stevenson's statements that the extension "is necessary to allow us to attempt a temporary fix to cease the bypass." (See Affidavit of Harold Thompson, Jr. ¶ 3 ["Commissioner's Aff."] (attached as Ex. 2 to Mot. for Enlargement of Time).)

functioning, operational mode." The Court thus agrees with the United States that "the Virgin Islands has no intention of making the LBJ Pump Station operational by March 9, 2000."

As evidenced by the hearing testimony of Mr. Stephenson, the Virgin Islands obviously was aware long before the February 11th hearing, of all the significant factors and problems at the LBJ Pump Station upon which it has based both of its requests for extensions of time. The Court distinctly recalls Mr. Stephenson's testimony at the hearing blaming the majority of the problems in keeping the station operating on the allegedly substandard wet well valves installed by the Army Corps of Engineers with the approval of the United States. He repeated these allegations, which the Commissioner adopted, in support of the second request for enlargement of time:

It should be noted that these valves were what started the bypasses in the first place. These valves are the main source of the problems at LBJ. All nine valves installed by the Corps of Engineers are now faulty. . . . The DPW objected to the Corps of Engineers work and equipment. The valves now appear to have been defective and outdated which has cause delays in getting the LBJ Pumpstation operation. . . . There are nine valves that were installed . . . under the direction of [the United States Environmental Protection Agency], and all nine valves have failed through no fault of DPW.

(See Stephenson Aff. ¶ 9.) According to the United States, the Virgin Islands has been aware of problems with the valves at the

LBJ Pump Station since at least April 1, 1998. (See Modesto Decl. ¶ 11.)

Despite knowing from the outset that the failed wet well valves had caused the massive discharge of more than one million gallons per day of raw sewage, bypassed from the LBJ Pump Station, there nevertheless is no evidence that the Virgin Islands took any action to obtain replacement valves until the Court was required to intervene. The Virgin Islands instead chose to ignore the problem and to rely on illegal bypasses, which have allowed over 100 million gallons of raw sewage to spew onto the streets, onto the beaches, and into the harbors of St. Croix from the LBJ Pump Station alone since August of 1999. In light of such evidence of lack of management, if not gross mismanagement, of the limited available resources, the Court will no longer accept the excuse that the problem with the Virgin Islands' wastewater management system is simply lack of money.

Only four years ago, 1996-97, the United States invested \$2 million to improve four wastewater pump stations in St. Croix. (See Schultz Decl. ¶ 2.) As mentioned above, this included the nine wet well valves and the three identical pumps at the LBJ Pump Station. (See *id.* ¶¶ 3, 5.) Today, only one pump is operational and all nine of the valves have failed. Given the demonstrated inability of the Virgin Islands to plan and manage

the use of its resources, the explanation for these failures given by the United States is charitable:

These valves may have become nonoperational due to the failure of DPW to perform routine operation and maintenance procedures at the pump station, including the failure to adequately control sand and grit in the system that can damage the valves and the failure to perform routine maintenance on the valves as specified in the training and inspection reports in DPW's possession.

(See Modesto Decl. ¶ 11.)

By separate Order, the Court has referred this matter to Magistrate Judge Jeffrey L. Resnick for the purpose of gathering the information, technical or otherwise, necessary for him to evaluate and report back to the Court on whether Pump No. 1 can be placed in operation immediately to end the illegal bypass at this pump station, as the United States contends, (see Memorandum in Opp'n to Mot. of the Gov't of the V.I. for an Add'l Ext. of Time at 4-5); or whether Pump No. 1 cannot be brought on line until replacements for two wet well valves can be located and installed, because it would be likely to cause more problems with the dry well otherwise, and that a "temporary fix" of a 4" line must be used around the LBJ Pump Station until the new valves can be installed, as the Virgin Islands contends, (see Affidavit of Victor F. Stephenson ¶ 9-10 (attached as Ex. 1 to Mot. for Enlargement of Time to Comply with the Court's Order Regarding the LBJ Pump Station)). (See Order (Mar. 6, 2000).)

How the Court resolves the conflicting explanations of the United States and the Virgin Islands will be decided after the Court receives Judge Resnick's Report and Recommendations. The ultimate solution may be for the United States to take over the replacement, construction, operation, and maintenance of the entire Virgin Islands wastewater management, just as the news media has reported the EPA is about to take over the dumps on St. Croix and/or St. Thomas. In the meantime, subject to the findings of Magistrate Judge Resnick, the Court will deny the Virgin Islands' second motion for an extension of time. An appropriate order follows.

ENTERED this 6th day of March, 2000.

FOR THE COURT:

_____/s/_____
Thomas K. Moore
District Judge

ATTEST:
ORINN ARNOLD
Clerk of the Court

By: _____
Deputy Clerk

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DIVISION OF ST. THOMAS AND ST. JOHN

United States of America,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 1984-104
)	
Government of the Virgin Islands,)	
)	
Defendant.)	
_____)	

ORDER

For the reasons set forth in the accompanying memorandum of even date, it is hereby

ORDERED that the Government of the Virgin Islands' motion for an extension of time to March 9, 2000, to have the LBJ Pump Station back on line in a fully functioning, operational mode, and the bypasses terminated is **DENIED**.

ENTERED this 6th day of March, 2000.

FOR THE COURT:

_____/s/_____
Thomas K. Moore
District Judge

ATTEST:
ORINN ARNOLD
Clerk of the Court

By: _____
Deputy Clerk

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